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AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

SOURCE: 62 FR 34179, June 25, 1997, unless otherwise noted.

Subpart A—Disbursing Official Offset

§ 285.1 Collection of past-due support by administrative offset.

(a) *Definitions.* For purposes of this section:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Debt as used in this section is synonymous with the term past-due support.

Disbursing official includes an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another Federal law.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury. Fiscal Service is the designee of the Secretary of the Treasury for all matters concerning this section, unless otherwise specified.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

Past-due support means the amount of support determined under a court order, or an order of an administrative procedure established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. The term child as used in this definition is not limited to minor children.

Past-due support being enforced by the State means there has been an assign-

ment of the support rights to the State, or the State making the request for offset is providing services to individuals pursuant to 42 U.S.C. 654(5) (section 454(5) of the Social Security Act), or the State is enforcing support pursuant to a cooperative agreement with or by an Indian tribal government.

State means the several States of the United States. The term State also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Secretary means the Secretary of the Treasury.

(b) *General rule.* Fiscal Service may enter into a reciprocal agreement with a State for the collection of past-due support being enforced by the State by administrative offset from certain Federal payments. Upon notification of past-due support either directly from a State which has entered into such an agreement or from HHS, disbursing officials of Fiscal Service or any other disbursing official of the United States shall offset Federal payments which are subject to offset under this section, to collect past-due support. The amount offset, minus the offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures.

(c) *Agreements.* Fiscal Service may enter into reciprocal agreements with States for disbursing officials of Fiscal Service and any other Federal disbursing official to offset certain Federal payments to collect past-due support being enforced by the State. The agreement shall contain any requirements which Fiscal Service considers appropriate to facilitate the offset and prevent duplicative efforts and shall require States to prescribe procedures governing the collection of past-due support by Federal administrative offset. For purposes of this section, reciprocal means of mutual benefit. An agreement between Fiscal Service and a State to collect past-due support by offsetting Federal payments will be considered of mutual benefit and it is not required that States conduct administrative offsets to collect debts owed to the Federal Government.

States which have entered into an agreement with Fiscal Service pursuant to this section may thereafter request, in the manner prescribed herein, that an offset be performed. Such requests shall be made by the appropriate State disbursing official which, for purposes of this section, means an appropriate official of the State agency which administers or supervises the administration of the State plan under Title IV-D of the Social Security Act.

(d) *Notification to Fiscal Service of past-due support.* (1) States notifying Fiscal Service of past-due support must do so in the manner and format prescribed by Fiscal Service. States notifying HHS of past-due support must do so in the manner and format prescribed by HHS. HHS shall notify Fiscal Service of all past-due support referred to HHS by States for collection by administrative offset provided that the requirements of paragraphs (d)(3) and (h) of this section have been met.

(2) When a State has knowledge that past-due support is being enforced by more than one State, the State notifying Fiscal Service or HHS of the past-due support must inform any other State involved in enforcing the past-due support when it refers the debt for offset and when it receives the offset amount.

(3) The notification of past-due support must be accompanied by a certification that the debt is past-due, legally enforceable, and that the State has complied with all the requirements as set forth in paragraph (h) of this section and with any requirements imposed by State law or procedure. For debts so certified, the Secretary may waive sections 552a (o) and (p) of Title 5, United States Code, where applicable, in accordance with the Secretary's authority under 31 U.S.C. 3716(f).

(4) Fiscal Service may reject a notification of past-due support which does not comply with the requirements of this section. The State will be notified of the rejection along with the reason for the rejection.

(e) *Minimum amount of past-due support.* Fiscal Service will reject a notification of past-due support where the past-due support owed is less than \$25.00. This amount may be adjusted from time to time by Fiscal Service to

ensure that the cost of collection does not exceed the debt.

(f) *Limitations.* Debts properly submitted to Fiscal Service for administrative offset will remain subject to collection by administrative offset until withdrawn by the State provided the debt remains past-due and legally enforceable.

(g) *Notification of changes in status of debt.* The State notifying Fiscal Service or HHS of past-due support shall, in the manner and in the time frames provided by Fiscal Service or HHS, notify Fiscal Service or HHS of deletions or decreases in the amount of a debt referred for collection by administrative offset. The State may notify Fiscal Service or HHS of any increases in the amount of a debt referred for collection by administrative offset provided the State has complied with the requirements of paragraph (h) of this section with regard to those amounts.

(h) *Advance notification of intent to collect by administrative offset.* (1) The State, or Fiscal Service or HHS on behalf of the State, if the State requests and Fiscal Service or HHS agrees, shall send a written notification, at least 30 days in advance of referral of the debt for offset, to the individual owing past-due support, informing the individual that the State intends to refer the debt for collection by administrative offset against Federal payments. The notice must also inform the individual of:

(i) The nature and amount of the debt; and

(ii) The right to an administrative review by the State referring the debt or, upon the request of the individual, by the State with the order upon which the referral was based, of the determination of the State with respect to the debt and of the procedures and time frames established by the State for such reviews.

(2) Prior to referring a debt to Fiscal Service for collection by administrative offset, States must provide individuals with a reasonable opportunity to exercise the rights enumerated in paragraph (h)(1) of this section in accordance with procedures prescribed by the State.

(i) *Payments subject to offset.* Federal payments subject to offset under this

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section include all Federal payments except:

(1) Payments due to an individual under

(i) Title IV of the Higher Education Act of 1965;

(ii) The Social Security Act;

(iii) Part B of the Black Lung Benefits Act;

(iv) Any law administered by the Railroad Retirement Board;

(2) Payments which the Secretary determines are exempt from offset in accordance with paragraph (k) of this section;

(3) Payments from which collection of past-due support by administrative offset is expressly prohibited by law;

(4) Payments made under the Internal Revenue Code of 1986 (except that tax refund payments are subject to offset under separate authority); and

(5) Payments made under the tariff laws of the United States.

(j) *Special provisions applicable to Federal salary payments.* (1) Unless a lower maximum offset limitation is provided by applicable State law, the maximum part of a Federal salary payment per pay period subject to offset to collect past-due support shall not exceed those amounts set forth at section 1673(b)(2) (A) and (B) of Title 15, United States Code, as follows:

(i) Fifty (50%) percent of the debtor's aggregate disposable earnings for any pay period, where the debtor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies. A debtor shall be considered to be supporting a spouse and/or dependent child only if the debtor provides over half of the spouse's and/or dependent child's support.

(ii) Sixty (60%) percent of the debtor's aggregate disposable earnings for any pay period where the debtor fails to assert by affidavit or establish by other acceptable evidence that he/she is supporting a spouse and/or dependent

child, other than a former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies.

(2) The maximum allowable offset amount shall be reduced by the amount of any deductions in pay resulting from a garnishment order for support. Nothing in this rule is intended to alter rules applicable to processing garnishment orders for child support and/or alimony.

(3) Federal salary payments subject to offset for the collection of past-due support include current basic pay, special pay, incentive pay, retainer pay, overtime, or in the case of an employee not entitled to basic pay, other authorized pay. Aggregate disposable earnings for purposes of determining the maximum amounts which may be offset under paragraph (j)(1) of this section is Federal salary pay remaining after the deduction of:

(i) Any amount required by law to be withheld;

(ii) Amounts properly withheld for Federal, State or local income tax purposes;

(iii) Amounts deducted as health insurance premiums;

(iv) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(v) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

(4) At least 30 days in advance of offset, the disbursing official shall send written notice to the debtor of the maximum offset limitations described in paragraph (j)(1) of this section. The notice shall include a request that the debtor submit supporting affidavits or other documentation necessary to determine the applicable offset percentage limitation. The notice shall also inform the debtor of the percentage that will be deducted if he/she fails to submit the requested documentation.

(5) At the time the past-due support debt is submitted for offset, the State shall advise Fiscal Service or HHS if

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the maximum amount of a Federal salary payment that may be offset is less than the amount described under this paragraph.

(k) *Payments exempt from administrative offset to collect past-due support being enforced by a State.* The Secretary will exempt from administrative offset under this part payments made under means-tested programs when requested by the head of the Federal agency which administers the program. For purposes of this section, means-tested programs are programs for which eligibility is based on a determination that income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. The Secretary may exempt from administrative offset under this section any other class or type of payment upon the written request of the head of the agency which authorizes the payments. In determining whether or not to grant such exemptions, the Secretary shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment agency's program.

(l) *Fees.* A fee which Fiscal Service has determined to be sufficient to reimburse Fiscal Service for the full cost of the offset procedure, shall be deducted from each offset amount. Fiscal Service will notify the States, annually and in advance, of the amount of the fee to be charged for each offset.

(m) *Offsetting payments—(1) Conducting the offset.* Disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other Government corporation, any disbursing official of the United States designated by the Secretary, or any disbursing official of an executive department or agency that disburses Federal payments shall offset payments subject to offset under this section to satisfy, in whole or part, a debt owed by the payee. Disbursing officials shall compare payment certification records with records of debts submitted to Fiscal Service for collection by administrative offset. A match will occur when the taxpayer identifying number and name control of a payment record are

the same as the taxpayer identifying number and name control of a debt record. The taxpayer identifying number for an individual is the individual's social security number. When a match occurs and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or part, the debt. Any amounts not offset shall be paid to the payee. The amount that can be offset from a single payment is the lesser of the amount of the debt (including interest, penalties, and administrative costs); the amount of the payment; or the amount of the payment available for offset if a statute or regulation prohibits offset of the entire amount. Debts remain subject to collection by offset until paid in full.

(2) *Disposition of amounts collected.* Fiscal Service will transmit amounts collected for debts, less fees charged under paragraph (l) of this section, to HHS or to the appropriate State. If Fiscal Service learns that an erroneous offset payment has been made to HHS or any State, Fiscal Service will notify HHS or the appropriate State that an erroneous offset payment has been made. Fiscal Service may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon Fiscal Service' request, the State shall return promptly to the affected payee or Fiscal Service an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected payee). HHS and States shall notify Fiscal Service any time HHS or a State returns an erroneous offset payment to an affected payee. Fiscal Service and HHS, or the appropriate State, will adjust their debtor records accordingly.

(n) *Administrative offset priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(2) Offsets will be applied first to past-due support being enforced by the State before any other offsets under this part.

(o) *Notification of offset.* (1) Disbursing officials of Fiscal Service or any other disbursing official which conducts an

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offset will notify the payee in writing of the occurrence of the offset to satisfy past-due support. The notice shall inform the payee of the type and amount of the payment that was offset; the identity of the State which requested the offset; and a contact point within the State that will handle concerns regarding the offset. Disbursing officials shall not be liable for failure to provide this notice.

(2) Disbursing officials of Fiscal Service or any other disbursing official which conducts an offset under this section will share with HHS, upon request by the Secretary of HHS, information contained in payment certification records of persons who are delinquent in child support obligations that would assist in the collection of such debts. When no offset is conducted, disbursing officials of Fiscal Service or any other disbursing official, will provide such information to HHS to the extent such information is available from offset activities conducted by Fiscal Service and other disbursing officials.

(p) *Liability of disbursing officials and payment agencies.* Neither the disbursing official nor the agency authorizing the payment shall be liable for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied. Disbursing officials will notify the agency authorizing the payment that the offset has occurred so that the agency authorizing the payment may direct any inquiries concerning the offset to the appropriate State.

[62 FR 36210, July 7, 1997, as amended at 63 FR 46145, Aug. 28, 1998; 74 FR 27433, June 10, 2009]

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

(a) *Definitions.* For purposes of this section:

Creditor agency means a Federal agency owed a claim that seeks to collect that claim through tax refund offset.

Debt or claim refers to an amount of money, funds, or property which has been determined by an agency official to be due the United States from any

person, organization, or entity, except another Federal agency. For the purposes of this section, the terms “claim” and “debt” are synonymous and interchangeable and includes debt administered by a third party acting as an agent for the Federal Government.

Debtor means a person who owes a debt or claim. The term “person” includes any individual, organization or entity, except another Federal agency.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

(b) *General rule.* (1) A Federal agency (as defined in 26 U.S.C. 6402(g)) that is owed by a person a past-due, legally enforceable nontax debt shall notify Fiscal Service of the amount of such debt for collection by tax refund offset. However, any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) owed such a debt may, but is not required to, notify Fiscal Service of the amount of such debt for collection by tax refund offset.

(2) Fiscal Service will compare tax refund payment records, as certified by the IRS, with records of debts submitted to Fiscal Service. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name (or derivation of the name, known as a “name control”) of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, Fiscal Service will reduce the amount of any tax refund payment payable to a debtor by the